

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/19/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000468

FILED: _____

STATE OF ARIZONA

ELIZABETH B ORTIZ

v.

THAD WILLIAM SWITZENBERG

JOHN R CALLAHAN

REMAND DESK CR-CCC
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

SCOTTSALE JUSTICE COURT

Cit. No. #0297282

Charge: A. OPERATING WITH ALCOHOL IN SYSTEM/BODY
B. UNDERAGE CONSUMPTION

DOB: 07/27/83

DOC: 12/09/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on December 12, 2001. This opinion is made within

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30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Scottsdale Justice Court, the arguments of counsel and the Memoranda submitted.

Appellant was convicted in the Scottsdale Justice Court of Operating a Motor Vehicle With Alcohol in His Body, a class 1 misdemeanor in violation A.R.S. Section 4-244.33; and Under Age Consumption of Alcohol, a class 1 misdemeanor in violation of A.R.S. Section 4-244.9. Appellant filed several pretrial motions: A Motion to Dismiss, Motion to Suppress the Results of a Preliminary Breath Test, Motion to Suppress Evidence of Beer Found in Appellant's Car, and a Motion to Suppress Statements. Appellant contends that since the State failed to respond in writing to his motions that the trial court erred in denying Appellant's Motion for Entry of Orders (a request that the court grant Appellant's motions by default). Appellant seems to feel some sense of entitlement to the granting of his motions without any evidentiary hearing or consideration of the merits of his motions. Contrary to Appellant's assertions, it is entirely within the trial court's discretion whether to extend the time for a party to respond to pretrial motions or to allow an oral response at the time of hearing. The trial court did not err.

Appellant also contends that the trial court erred in denying Appellant's Motion to Suppress the Preliminary Breath Test Result. Appellant contends that the police officers failed to follow the statutory requirements set forth in A.R.S. Section 28-1323 as prerequisites for the admissibility of blood alcohol test results. This is not a DUI case. The test was not a quantitative blood alcohol breath test. The test administered to Appellant was a preliminary breath test called the AlcoSensor. That test detects the presence of alcohol but does not measure the amount of alcohol in a person's blood. A.R.S. Section 28-1323 is totally inapplicable to a preliminary breath test. The trial judge did not err in overruling Appellant's

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objections to Officer Gould's testimony regarding the preliminary breath test.¹

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Scottsdale Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all future and further proceedings.

¹ R.T. of May 10, 2001, at page 59.
Docket Code 512